

### **REMARKS**

Entry of the foregoing amendments and reconsideration and withdrawal of the final rejection are respectfully requested in view of the following remarks.

Initially, it should be noted that the cited patent to Hartmann, et al., U.S. Patent No, 5,938,160, was not officially cited in the last Office Action and therefore this should be officially added to the file history as a cited reference. Although a copy of the reference was not provided, Applicant has now obtained a copy and the same is considered in the Remarks noted below.

With respect to the claims objections and the 112 rejection of the claims, by this Amendment, the claims have been amended in a manner suggested by the Examiner so as to resolve the 112 rejection of the claims. In addition to the foregoing, Claims 18 and 21 have been amended to more particularly define the novel features of the invention and the distinctions thereof over the art cited by the Examiner. As will be discussed in great detail hereinafter, it is respectfully submitted that the claims, as now amended, are patentably distinguishable over the cited references.

Turning now to the rejection of Claims 18-20 as being unpatentable over Hartmann (newly cited) in view of Dickey and Wang, as correctly noted by

the Examiner, Hartmann does not disclose the basket and opening being rectangular and it also does not disclose the use of fingers having a V-shaped profile. By this amendment, Claim 18 has been specifically amended to define the beverage container holder for both round and square beverage containers. It is clear from the description and illustration of the Hartmann, et al. device that the cup holder disclosed therein is used solely for round cups. While Dickey, et al. discloses a holder for a rectangular beverage containers, the device consists of a solid rectangular basket and as a result, its construction is entirely different from the frame like structure shown in Hartmann for a circular cup holder. Indeed, there is no disclosure in either of these patents of any suggestion or desirability of changing the configuration of the holder from a square to round or round to square configuration. As the Examiner well knows, it is improper to combine references unless there is some specific suggestion that can be found in the teachings thereof of the desirability of making such a combination. This is clearly lacking here necessarily causing the asserted combination to fail to render the present invention obvious over the combined prior art references.

Moreover, as noted above, Claim 18 has been amended to specifically define an "open frame-like" rectangular basket having a pair of opposite side walls defining at least two openings below the top edge border thereof from which downwardly depends one of the V-shaped fingers. Contrary to the Examiner's assertion, while Wang does disclose a plurality of springy

retainer members, they do not have a V-shaped profile as presently claimed. Rather, as can be seen clearly in Figure 2, the retaining members have an arcuate-like profile. Moreover, they do not depend from the top edge border of the cup holder into an opening thereof as instantly claimed. As a result, this limits the ability of the retaining members to adjust to a variety of cup dimensions and configurations. It is also noteworthy that the Wang device specifically discloses three retaining member and not at least four, as presently claimed.

As to Claim 19, there clearly is no suggestion in the combination of these patents of making them from a unitary member since the type of retaining members shown in Wang were apparently intended for receipt in a slot-like recess in the solid side wall of the cup holder. Accordingly, there is no suggestion in this patent of a unitary construction and it is only through improper hindsight reasoning that the Examiner can reconstruct this prior art in a distorted fashion to approximate the present invention and this is, of course, improper.

Turning now to the rejection of Claims 21 and 23 as being unpatentable over Fujihara in view of Dickey and Hartmann. As correctly noted by the Examiner, Fujihara did not disclose the openings being rectangular or suggest the use of a device for a rectangular beverage container and it is clear from Fujihara that the device is only intended for the use with round beverage

containers. Moreover, Fujihara does not disclose the use of at least four resilient fingers and it is not seen that the pressing plates 8 and 9 are equivalent to the downwardly depending resilient fingers having a V-shaped profile, as presently claimed. Indeed, there is no contemplation of Fujihara of a plurality of the pressing plates to accommodate either a square or round beverage holders. Furthermore, it is clear from Fujihara, et al. that the pressing plates and their manner of construction will not permit them to be made as a single unitary member with the rectangular tray, due to their pivotal mounting.

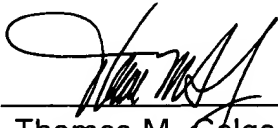
With respect to the rejection of Claim 22 as being obvious over the above combination and further view of Pratt, while Pratt does show a spring loaded support member, it offers no suggestions whatsoever of supporting rectangular containers and it does not even hint at the suggestion of it being used in conjunction with spring loaded fingers as presently claimed.

Finally, Applicant hereby requests a one-month extension of time in which to respond to the outstanding Office Action. A check in the amount of \$55.00 is enclosed herewith for the official fee associated therewith. In the event of any deficiency for the required amount for an extension of time, please debit Deposit Account No. 07-0130.

In view of the foregoing, it is respectfully submitted that all of the claims now in the application are patentably distinguishable over the references of record. Accordingly, reconsideration and withdrawal of the final rejection and allowance of the claims at an early date is earnestly solicited.

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Enclosures: Check for \$55.00  
Version with markings to show changes to claims

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## VERSION WITH MARKINGS TO SHOW CHANGES TO CLAIMS

18. (Amended) A beverage container holder for round and square beverage containers, comprising:

a rectangular basket having four side walls, each having a top edge border which collectively define an open top end and which, in turn, defines [defining] a rectangular opening, at least two of said side walls disposed opposite one another having at least two openings therethrough disposed beneath said top edge border thereof; and

[a plurality of] at least four resilient fingers coupled to said rectangular basket and extending inwardly toward said rectangular opening, said at least four resilient fingers being generally V-shaped to define a point of a V and having a V-shaped profile when viewed in a vertical plane with the point of the V extending generally towards the center of the rectangular opening, said at least four fingers cooperating to resiliently and releasably grasp both round and square beverage containers, said fingers each depending from one of said top edge borders of said opposite side walls such that they each extend downwardly into a different one of said sidewall openings; and

a generally U-shaped hook attached to and extending above said basket.

19. (Amended) A beverage container holder according to Claim 18, wherein said rectangular basket, [said fingers] at least four resilient fingers, and said U-shaped hook [member] are formed as a single unitary member.

21. (Amended) A beverage container holder for round and square beverage containers, comprising:

a rectangular tray having four side walls, each having a top edge border which collectively define an open top end and which, in turn, defines [defining] a rectangular opening, at least two of said side walls disposed opposite one another having at least two openings therethrough disposed beneath said top edge border thereof; and

[a plurality of] at least four resilient fingers coupled to said rectangular basket and extending inwardly toward said rectangular opening, said at least four resilient fingers being generally V-shaped to define a point of a V and having a V-shaped profile when viewed in a vertical plane with the point of the V extending generally towards the center of the rectangular opening, said at least four fingers cooperating to resiliently and releasably grasp both round and square beverage containers, said fingers each depending from one of said top edge borders of said opposite side walls such that they each extend downwardly into a different one of said sidewall openings; and

a supporting member rotatably coupled to said rectangular tray and being pivotable into a position located below said rectangular opening.